

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 16677
[Redacted]	)	
	)	DECISION
Petitioners.	)	
_____	)	

On June 21, 2002, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income tax, penalty, and interest for the taxable year 1998 in the total amount of \$296.

On June 26, 2002, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing but rather chose to rely on the documentation previously submitted. The Tax Commission, having reviewed the file, hereby issues its decision.

The Income Tax Audit Bureau (Bureau) received information that showed the taxpayer sold real property in Idaho in 1998. The Bureau researched the Tax Commission's records and found the taxpayer did not file an Idaho individual income tax return for the taxable year 1998. Idaho Code section 63-3026A(3)(ii) states that income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from the ownership or disposition of any interest in real or tangible personal property located in Idaho.

The Bureau sent the taxpayer a letter asking him about the sale of the Idaho property and his requirement to file an Idaho income tax return. The taxpayer responded indicating that the sale was a nontaxable transaction. The taxpayer provided copies of supporting documentation to show that his net gain on the property ownership was \$122.07. The Bureau reviewed the taxpayer's documentation and determined the taxpayer had a gain on the sale of \$11,001. The Bureau prepared an Idaho income tax return for the taxpayer and sent him a Notice of Deficiency Determination, which the taxpayer appealed.

The Tax Commission sent the taxpayer a letter giving him two options for having the Notice of Deficiency Determination redetermined. The taxpayer chose to rely upon the information he had previously provided.

The taxpayer stated he never resided in Idaho. He said when he bought the property in Idaho in 1990, he intended to build a house and retire there. In 1993, the taxpayer was diagnosed with cancer and he retired two years later. This put his plans for the Idaho property on hold. He later decided to sell the property, which took more than two years. The taxpayer stated he incurred a lot of expenses on the property while he owned it. He paid property taxes, property owner assessments and interest on the loan to purchase the property. The taxpayer stated all these expenses should be considered in calculating the gain on the sale of the property.

The Idaho Code is clear in section 63-3026A(3)(ii) that income resulting from the disposition of real property in Idaho is Idaho source income. Idaho Code section 63-3030 sets the filing requirement thresholds for individuals having Idaho source income. The threshold for nonresident individuals for tax year 1998 was \$2,500. Therefore, if the taxpayer had Idaho source income in excess of \$2,500, he was required to file an Idaho income tax return.

The information available shows the taxpayer sold his Idaho property for \$65,700. The Bureau computed the taxpayer's gain on the sale at \$11,001. Both of these amounts exceed the filing requirements of Idaho Code section 63-3030; therefore, the taxpayer was required to file an Idaho income tax return. The Bureau prepared a return for the taxpayer using the gain on the sale as Idaho source income. Since the taxpayer held the Idaho property for over 18 months, the Bureau computed and allowed him the Idaho capital gains deduction.

The taxpayer argued that his net gain on the sale was \$122.07. Apparently, the taxpayer believes he should be allowed to deduct what he paid for property taxes, interest on his loan, and

association dues and assessments. Internal Revenue Code (IRC) section 164 provides for the deduction of state and local personal property taxes paid in the taxable year within which the taxes were paid or accrued. IRC section 163 provides for the deduction of interest paid or accrued within the taxable year on indebtedness. However, subsection (h) of IRC 163 states no deduction shall be allowed for personal interest paid or accrued during the taxable year. Subsection (h) defines personal interest as interest which is not investment interest or qualified residence interest, among others.

Therefore, for income tax purposes, property taxes and interest on personal residence property or property held for investment are expensed (deducted) in the year paid. They are not capitalized expenses. As for the association dues and assessments, these are generally personal expenses and are not capitalized or deductible. (IRC section 262.)

The Tax Commission reviewed the return the Bureau prepared and found an omission in computing the taxpayer's Idaho taxable income. The taxpayer was a nonresident of Idaho in 1998. Idaho Code section 63-3026A provides for the computation of Idaho taxable income for nonresidents. It states that Idaho taxable income includes only those components of Idaho taxable income as computed for a resident which are derived from or related to sources within Idaho. In computing the Idaho taxable income, the standard deduction or itemized deductions, if applicable, and the exemptions, shall be allowed in the proportion that Idaho adjusted gross income bears to total (federal) adjusted gross income. The return prepared by the Bureau did not allow any personal exemptions or standard/itemized deductions.

The Tax Commission obtained additional information from [Redacted] and determined the amount of allowable personal exemptions and standard deduction. The Tax Commission also found that the taxpayer filed his federal return jointly with [Redacted]. Since Idaho Code section

63-3031 requires husbands and wives to file a joint return with Idaho if they filed a joint federal return, the Tax Commission hereby includes [Redacted] in this decision and corrected the return prepared by the Bureau.

WHEREFORE, the Notice of Deficiency Determination dated June 21, 2002, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that [Redacted] pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1998	\$106	\$ 27	\$ 32	\$165

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of taxpayers' right to appeal this decision is enclosed with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2003.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

#### **CERTIFICATE OF SERVICE**

I hereby certify that I have on this \_\_\_\_ day of \_\_\_\_\_, 2003, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED] [Redacted]  
[Redacted]\_\_\_\_\_